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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re I.C., a Person Coming Under the
Juvenile Court Law.

B208452

(Los Angeles County
Super. Ct. No. CK72532)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Jan G.
Levine, Judge. Affirmed.

Roland Koncan, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

A.W., the mother of four-year-old I.C., appeals from the juvenile court's disposition order sustaining dependency jurisdiction over I.C. We conclude that the order is supported by substantial evidence of A.W.'s continued involvement with illegal drugs. We affirm.

BACKGROUND

I.C. was born in May 2004 to A.W. and J.C., I.C.'s presumed father.¹ On April 10, 2008, when I.C. was three years old, the Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code² section 300, alleging that I.C. was at risk under section 300, subdivisions (b) (failure to protect the child) and (g) (father's failure to provide support).

The petition followed A.W.'s arrest for possession of narcotics paraphernalia three days earlier. On April 7, 2008, plainclothes Los Angeles Police Department officers were monitoring a corner known for use and sale of narcotics. A white Dodge van was parked at the end of a cul-de-sac nearby. The van's back doors were open and there was a folding table set up behind the van. Three males and two females were seated on the ground nearby.

The officers saw a silver Ford pull up in front of the van. As A.W. exited the car, the officers announced themselves and ordered everyone present to put their hands above their heads and line up. The officers saw hundreds of used syringes and some new syringes on the table, and bundles of used syringes on the ground. The officers took drugs and a knife from other suspects.

Officer Gonzalez asked A.W. if he could search the car. A.W. said, "Go ahead, but your [*sic*] going to find some pipes that's all I have no drugs." Officer Gonzalez searched the car and found several used syringes in an open makeup bag on the center

¹ The juvenile court found that J.C. was I.C.'s presumed father on April 10, 2008. J.C. does not appeal from the jurisdiction and disposition orders.

² All subsequent statutory references are to the Welfare and Institutions Code.

console, two burnt cookers (bottle caps used to cook heroin), several clean cotton balls, and a yellow tie-off rubber band (often used to concentrate blood on a vein). A second makeup bag, also on the console, contained a four and a half-inch cylindrical glass pipe with one end burnt containing copper wire mesh and in the center, a white powdery residue resembling cocaine base. Another pipe, four inches, had a bowl at one end burnt at the bottom, with a small hole at the top containing a milky white residue resembling methamphetamine. The officers handcuffed A.W. Officer Gonzalez noticed a toddler car seat in the back seat and toddler clothes and toys on the floor area. He asked A.W. if she had children, and she replied that she had a son. Officer Gonzalez asked who was watching her son, and A.W. said a friend, but she did not know his address or his last name, only how to drive to his house. Officer Houlihan then questioned A.W., and she was taken to the station and booked.

Officer Houlihan found I.C. in the care of an adult male, a convicted felon, and took him into protective custody. A DCFS social worker arrived at the station and Officer Nares, one of the police officers who had been at the scene, told her needles were found in A.W.'s purse and in her diaper bag, and on the front and back seats of the car. A.W. had told the officers that she and I.C. lived with her mother, I.C.'s maternal grandmother (MGM), who was already at the station caring for I.C. The social worker interviewed I.C., who appeared in good health and spoke well. He told the social worker that he did not know what drugs were, that he had seen his mother smoke cigarettes, that he knew what a needle was but had never seen his mother use one, and that his mother was never unable to care for him.

MGM told the social worker that A.W. had been using heroin on and off for about five years and had been trying to get off the drug all that time. A.W. had lived with I.C. in a Salvation Army shelter and a sober living facility until she and I.C. moved in with MGM and her partner. When A.W. was under the influence of drugs, she was not totally out of it but could no longer care for I.C., which "kind of places that job on you." A.W. and I.C. had a room in MGM's home, and I.C.'s school was five minutes from MGM's

job. MGM stated she was only trying to help, that A.W. may not understand the degree of her addiction, and that she never saw A.W. use in front of I.C.

The social worker also interviewed A.W. at the station. A.W. stated that she was arrested at the needle exchange and “I am not using, I was just exchanging needles for a friend.” A.W. also stated, “I just recently relapsed, but I’m not using right now. If I beat the charges, can I get my son back?” and added that she had used heroin “off and on, about 5 years.” She also suffers from depression and had been involved with Pacific Clinics and the Northeast Mental Health Center. She had spoken to I.C.’s father four days ago, did not know his phone number or address, and added that he uses methamphetamine, has a domestic violence arrest against her, and does not assist with the care of I.C. I.C. was taken into protective custody and released to MGM. A.W. was charged with possession of narcotics paraphernalia and released the next day.

The juvenile court held an arraignment and detention hearing on April 10, 2008, with A.W., I.C., and MGM present. The court found a prima facie case for detaining I.C. from A.W. under section 300, subdivision (b), and placed I.C. with MGM, in the home he had been living in with A.W. The court ordered monitored visitation for A.W. at least three times a week or as frequently as A.W. could work out with MGM, and provided A.W. family reunification services, random drug testing, a substance abuse program, and counseling for domestic violence, parenting, and substance abuse. A.W. expressed her desire to move back into MGM’s house, and the court explained that she would first have to test clean and be in a drug program.

At the adjudication hearing on May 21, 2008, DCFS filed its jurisdiction/disposition report. The report alleged that A.W. placed I.C. in danger in violation of section 300, subdivision (b) by possessing used syringes and a pipe in the vehicle in which A.W. transported I.C., by being arrested for possession of narcotics paraphernalia, and by her “five year history of illicit drug use including heroin and is [*sic*] a current user of heroin which renders the mother incapable of providing regular care for the child. On prior occasions, the mother was under the influence of illicit drugs in the child’s home in the child’s presence.”

DCFS had been ordered not to interview A.W. regarding her arrest. In an interview regarding her drug use, A.W. had explained that she started using drugs at age 12, was clean from 19 to 22, but began using drugs again at age 22. She was “strung-out on heroin” but stopped using while pregnant; I.C. was not born positive. Three months or so later, A.W. again started using (sniffing) heroin and other drugs. She had a possession charge, attended a drug rehabilitation program, and “struggled with using and not using.” Upon her return to the area where she lived with MGM, a male friend asked her for a ride to a needle exchange and after he got out of the car, ““there was a raid and that person left paraphernalia and when the police went to search my car they arrested me for those pipes. I told them that that stuff wasn’t mine.”” The social worker asked A.W. not to talk about the arrest. A.W. went on to say that she is a “recovering addict” who used drugs in the past, had a support group, and had not used in the last six months. She never used in front of I.C and thought she was able to care for him. A.W. was “okay” and “really thankful” that I.C. was with her mother, and I.C. “is really pleased that he is with them.”

I.C.’s father stated that he did not know whether A.W. was using currently. MGM stated that A.W. had substance abuse problems that MGM first learned about five years ago, that her problem was with heroin but “I don’t think she is using now.” A.W. hid herself when she used and was a very good mother when not using, and even while using tried to be a good mother, although, “How long can you leave a kid in front of the TV?” MGM thought A.W. was not using right now, “for 3 weeks [since the arrest] she seems to be lucid and aware of her situation as a result of this, she doesn’t want to lose [I.C.].” “She has a 5 year history, I can’t give you an honest answer (referring to mother’s ability to care for the child) as long as she’s not using she’s a good mother, if she is using, she is not.”

I.C., interviewed at home, said he liked living with A.W. but also likes living with MGM, loves his mother and “grandparents” and likes living with his “grandparents.” “When asked if he would rather live with his mother, [I.C. stated], ‘She lives here too.’”

A.W. visited in the mornings to help get I.C. ready for school, and in the afternoon after school, to help cook dinner (MGM was always present), leaving before I.C. was put

to sleep. There were no problems with the visits. A.W. was enrolled at Northeast Mental Health Center in therapy and education with a primary focus on sobriety and support. A letter from the center stated that A.W. attended dual diagnosis therapy, training to become a mental health advocate, and 12-step recovery groups, and that I.C. was a “strong and valuable part of [her] life.”

The report’s assessment stated that A.W. “has failed to provide a safe and stable environment for [I.C.] . . . in that she has an extensive history of drug use and is an illicit drug user. Such a blatant act of neglect has endangered the child’s physical and emotional wellbeing by mother using and exposing him to the harmful effects of substance abuse.” Further, “Mother has demonstrated poor judgment and planning in that she has a history of leaving her child in the care of acquaintances It appears that mother has recently completed a drug rehabilitation program and is aware of the requirements in order to maintain a sober lifestyle. Yet her current behavior and recent arrest for possession of narcotic paraphernalia would indicate that mother is not fully rehabilitated. . . . It is unclear whether or not mother continues with her illicit drug use, it is clear however that mother has not resolved her condition and is unable to understand the detrimental harm caused to the child.” The report recommended drug rehabilitation, counseling, and a psychological evaluation for A.W.

At the hearing, with A.W. present, DCFS argued that A.W. was “still using heroin or some type of drug, or at the very least she’s not complying with what I would assume would be the terms of a drug rehabilitation program, and would have been expected of somebody who’s expected to remain sober, which is not to associate with people using drugs, go to an area where people are using drugs, and certainly not have drugs or drug paraphernalia in her car.” The attorney for I.C. argued that the arrest showed “she’s still surrounding herself with drugs. She’s still in the drug environment whether it was hers or not. [¶] She says she’s only been clean six months and she has been tested once. I hear from her attorney that she is in another program right now; however, she has not completed that program.” A.W.’s attorney argued that A.W. was transporting a friend to the needle exchange and “claims the paraphernalia was not hers.” Because “there’s no

indication the child was put in danger,” the arrest does “not support a finding of substantial risk.” Further, “there is no evidence that the mother currently uses.” “There’s no nexus between the mother’s history of substance abuse and the substantial risk of harm to the child in the future,” given A.W.’s completion of a residential program and her participation in therapy and training.

I.C.’s attorney responded that the arrest did not create the risk to the child, “it’s the actions that lead to that. She left this child with somebody when she was doing whatever she was doing. She didn’t know the address of the person when the police officer asked her where her son was . . . and ended up being arrested. That alone creates a risk to this child. . . . Yes, mother has been on and off participating in a program through the mental health department, but the fact[s] surrounding her arrest[] indicate it’s not helping, it’s not working for her. She has a significant long-term history of substance abuse. And it’s not marijuana or alcohol, it’s heroin which the court and everyone else is aware of what a serious drug that is and how detrimental it can be to someone’s life. The grandmother indicated that throughout [I.C.’s] life she has had to take care of this child on and off when the mother’s using drugs, that’s creating a risk to the child. If the mother — she’s not able to stop using drugs, she can’t stay clean for a period of time, she says she’s been sober for six months, but her actions lead the Department to question that. And even if she has been sober for six months, her actions are not the actions of somebody who’s a sober person. And until she has shown a significant, long-term period of sobriety — that means not only not using drugs, but not associating with people using drugs and not being in a car where there’s drug paraphernalia, not going in places she knows to be areas where people use and sell drugs — then the Department believes there is a risk to this child from her actions and behavior.”

The trial court found subdivision (b)(1) to be true by a preponderance of the evidence, adopting counsel’s argument. “[T]he circumstantial evidence is overwhelming in meeting the burden as far as the preponderance from the police report that you did possess drug paraphernalia.” The court also found subdivision (b)(2) true by a preponderance. “I don’t think it’s clear that you’re a current user of heroin, but I think

it's . . . clear you're a current drug user, and I'm going to change that to 'drug user.' Here, again, the circumstantial evidence of not just having some pipes, but having all the paraphernalia that you would need to take drugs; the tie off band, the glass pipe that had the wire mesh and had cocaine residue and a meth residue. So I find that the Department met its burden on that as amended." The court further stated, "Just let me add, I found persuasive that some of the needles were found in a diaper bag according to the police report."³

The court continued the disposition to June 3, 2008 for a contest by A.W. on I.C.'s placement. On June 3, DCFS filed a supplemental report. As of May 2, 2008, A.W. was enrolled in a substance abuse treatment program including random drug testing and individual and group counseling, as well as education on domestic violence and parenting. She had tested clean on May 2, 2008. At the hearing, at which A.W. and MGM were present, counsel for DCFS stated that the Department did not object to A.W. returning to live in MGM's home with I.C. once she completed four weekly random drug tests; "[s]he would need to continue to test clean and stay in the program before we can return the child to her." I.C.'s counsel agreed, noting that MGM was willing to have A.W. return and was willing to monitor her, but "I would like, for safety's sake, a few more drug tests." A.W.'s counsel argued that A.W. had actually tested clean four times since the initial detention, was in a program, and family maintenance services could ensure she stayed clean. A.W.'s counsel asked "for the child to be sent home today." Counsel for DCFS pointed out that there were only two negative drug tests before the court, one on the date of arrest and the second on May 2.

³ The information that the diaper bag contained a needle or needles was in the petition, not the police report. The social worker reported that at the police station on the night of the arrest, Officer Nares told her there were needles in A.W.'s purse and diaper bag. A specific timely objection must be made to hearsay evidence contained in a social study (§ 355, subd. (c)), and A.W. did not object. (See *In re Lesly G.* (2008) 162 Cal.App.4th 904, 914-915.)

A.W. argued that she had been clean since the year before, that the drug paraphernalia “was in my car that someone left in my car.” The trial court responded, “Right, and I found that the circumstantial evidence suggested it was likely you were using. That’s what we sustained, that’s what I found. I’m not going to relitigate the jurisdictional hearing. I’m just going to say that I’d like to see you get some more clean tests and get the program under your belt because even if you aren’t using or you weren’t using in April, you were definitely involved with people who were using . . . and that would make it all the more likely you would make another poor decision and start using again, so I would like to see some further commitment to a clean and sober lifestyle with everything that refers to.” A.W. responded that she was working on that, and the court stated: “That’s great. The Department can walk on a request to have the child returned to you before our next court date if you continue to improve. I hope they do.” A.W. still used MGM’s home as her mailing address, but was staying nearby at her brother’s.

The court reinforced the dispositional orders removing I.C. from both parents, ordering I.C. into the care of MGM and ordering DCFS to provide family reunification services, drug rehabilitation and random testing, parenting education, and counseling. A.W. could move in to live with MGM after four more consecutive clean drug tests, and had monitored visitation with discretion to liberalize. A.W. appeals.

DISCUSSION

The juvenile court found jurisdiction over I.C. under section 300, subdivision (b), which provides for jurisdiction when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” The court concluded that there was a substantial risk that I.C. would suffer serious harm from A.W.’s drug use. On appeal, A.W. argues that there was insufficient evidence to support the court’s order.⁴ We disagree.

⁴ A.W. also challenges the detention findings on the basis that “no reasonable efforts were made to prevent or eliminate the need for detaining [I.C.] from mother’s care.” Her

If the record contains substantial evidence to support the juvenile court's findings, we uphold those findings. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.) "We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citations.] The appellant has the burden of showing the finding or order is not supported by substantial evidence." (*Id.* at pp. 1333-1334.)

There was sufficient evidence to support a conclusion that the drug paraphernalia in the car was A.W.'s. Although A.W. argued that the items belonged to a male friend she was driving to the needle exchange, there was no evidence beyond her statement that anyone else was with her in the car, and there was no mention in the police report or elsewhere of a passenger. Further, as the court pointed out, there was evidence that needles were found in her purse and diaper bag. There was ample evidence from which the court could draw reasonable inferences in support of the conclusion that the paraphernalia belonged to A.W.

A.W. also argues that no evidence established that she was a current drug user. There was, however, evidence establishing that A.W. had been using heroin on and off for five years; A.W. herself stated that she had recently relapsed and continued to struggle with using and not using; and she was found with needles, pipes and other paraphernalia within her reach in her car. While she denied using drugs in the last six months, the court found otherwise, stating that while it was not clear whether A.W. was currently using heroin, it was "clear you're a current drug user" based on the presence in her car, purse, and diaper bag of items she would need to take drugs, including heroin,

appeal, however, is from the jurisdictional and dispositional order. She cannot appeal the court's findings at the initial detention hearing. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1153, 1156 [section 395 does not authorize an appeal from an "isolated finding" such as a finding of reasonable reunification services; "mother cannot appeal the reasonable services finding now, nor can she raise the issue by way of an appeal from any subsequent adverse order"].)

cocaine, and methamphetamine. The court's conclusion that A.W. was a current drug user was supported by substantial evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [even contradicted evidence can serve as substantial evidence to support a finding of jurisdiction].)

A.W. argues that I.C. did not sustain injury or detriment. But section 300, subdivision (b), provides for jurisdiction when the child faces a *risk* of serious harm. Actual harm is not required. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3.) The court concluded that A.W.'s conduct in April showed her involvement with people who were using drugs, "which would make it all the more likely you would make another poor decision and start using again." MGM testified that A.W. was not a good mother when under the influence. When the drug paraphernalia was discovered in A.W.'s car at the needle exchange location, she had left I.C. with a convicted felon; she did not know his last name or address. Even an isolated instance of neglect can serve as substantial evidence where accompanied by evidence of substance abuse and denial about that abuse. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1657-1658.) While the mere presence of illicit drugs in the home and a finding of a "remote possibility" that the children may be endangered is not sufficient evidence to justify adjudging a minor a dependent (*In re W.O.* (1979) 88 Cal.App.3d 906, 910-911), here there was evidence that the paraphernalia was in the car in which I.C. traveled, A.W. had left I.C. with an individual whose last name and address she did not know, and when A.W. was under the influence she was unable adequately to care for I.C.

Finally, A.W. argues that there was not substantial evidence of a risk of harm to I.C. at the time of the jurisdictional hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The hearings were held on May 21 and June 3, 2008, less than two months after A.W.'s arrest on April 7. The court specifically found that A.W. was a drug user at the time of the hearings. A.W. had tested clean only twice, and the court required A.W. to test clean for a longer period of time to demonstrate a commitment to sobriety. There was substantial evidence that the risk to I.C. existed at the time of the hearings.

The trial court's decision to remove I.C. from A.W.'s custody was supported by substantial evidence.⁵

DISPOSITION

The June 3, 2008 jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

⁵ We note that the court placed I.C. in MGM's home, where he had been living with A.W. and where A.W. was able to visit daily.

*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.